IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 8 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S. G. CHEMICALS AND PHARMAC--EUTICALS LTD.

Versus

COMMISSSIONER OF INCOME-TAX

Appearance:

MR RK PATEL for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 08/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the assessee, the Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred following two questions of law for the opinion of this Court relating to Assessment Year 1979-80:-

(1) "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the difference in exchange fluctuation rate amounting to Rs. 29,59,402/- was not allowable to revenue expenditure?"

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the claim of deduction of interest paid under Sec. 220(2) of the Act?"

At the instance of Revenue, the Appellate Tribunal Ahmedabad Bench "B" has referred the following question of law for the opinion of this Court relating to Assessment Year 1979-80:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the assessee is entitled to investment allowance/depreciation in respect of the expenditure of Rs. 29,59,402/- despite the fact that the machineries were installed prior to 1.4.1976 and the assessment year in question was 1979-80?"

Heard the learned Counsel for the parties. First of all we propose to deal with the question referred to us at the instance of Revenue. In CIT Vs. Windsor Foods Ltd., reported in (1999) 235 ITR 249, the Appellate Tribunal had held that the assessee was entitled to deduction of investment allowance on the amount of Rs. 80,414/- being the additional liability. Disapproving the same the High Court has held that the deduction of investment allowance can be allowed in respect of the previous year in which the machinery was installed or first put to use and if the deduction becomes allowable in that relevant previous year, full investment allowance is to be worked out on the basis of actual cost of the machinery or plant to the assessee at that relevant time. What is emphasised in the said decision is that the fact that the investment allowance is carried forward under sub-section (3) or that the reserve can be created in any subsequent assessment year due to insufficiency of profits in the earlier years will not alter this situation and no question of revising the full amount of the investment allowance which was already worked out in the relevant previous year can ever arise by virtue of any subsequent fluctuation in the exchange rate. In view of this decision of the High Court, we are of the opinion that the Tribunal was not right in law in holding that the assessee is entitled to investment

allowance/depreciation in respect of the expenditure of Rs. 29,59,402/- despite the fact that the machineries were installed prior to 1.4.1976 and the assessment year in question was 1979-80. The question therefore which is referred to us at the instance of the Revenue is answered in the negative i.e. in favour of the Revenue and against the assessee.

So far as the first question which is referred to us at the instance of the assessee is concerned, in CIT Vs. Windsor Foods Ltd. (supra) the Division Bench after considering the provisions of Section 35B of the Act has held that the additional liability arising due to fluctuation in the exchange rate in the previous year was capital in nature and liable to be added to the actual cost of the asset. Therefore, we are of the opinion that the Tribunal was justified in law in holding that the difference in exchange fluctuation rate amounting to Rs. 29,59,402/- was not allowable as revenue expenditure. The said question is answered in the affirmative i.e. in favour of the Revenue and against the assessee.

So far as second question which is referred to us at the instance of the assessee is concerned, we find that in Saraspur Mills Ltd. Vs CIT, reported in (1997) 226 ITR 533, the Division Bench of this Court has held that the interest paid for late payment of income tax cannot be held to be allowable expenditure as the same cannot be treated as expenditure incurred wholly and exclusively for the purpose of business. In view of the principle laid down by Division Bench of this Court in the above quoted decision, we are of the opinion that the Tribunal was justified in rejecting the claim of deduction of interest paid under Section 220(2) of the Act. The second question referred to us at the instance of the Revenue is therefore answered in the affirmative i.e. in favour of the Revenue and against the assessee.

In the light of the opinion expressed above, the reference stands disposed of accordingly with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah,J.)

*/Mohandas